

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

KEITH GRAY AND DEBORAH HARRIS

VS.

CIVIL ACTION NO. 5:05cv210-KS-JMR

DOUG UPCHURCH, INDIVIDUALLY, ET AL

ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

This cause is before the Court on Plaintiffs' Motion for Summary Judgment against Defendant Mississippi Mortgage [75], no response thereto despite Show Cause Order entered by this Court on July 27, 2007 [76], and the Court after hearing and duly considering the same, finds that Plaintiffs' Motion for Summary Judgment against Defendant Mississippi Mortgage is well-taken and should be sustained for the reasons hereinafter stated.

FACTS

On January 24, 2002 the Plaintiffs Keith Gray and Deborah Harris (hereinafter "Plaintiffs") acquired ownership of a mobile home and .08 acres, located at Blue Creek Drive, Vicksburg, Mississippi 39180 (hereinafter "premises"), by virtue of a warranty deed from Buford Land Partners. Plaintiffs allege that by virtue of a scheme and a pattern of racketeering by Defendants, including Mississippi Mortgage, that the property was overvalued and Plaintiffs were damaged thereby. On March 28, 2007 Plaintiffs served Requests for Admission on Defendant Mississippi Mortgage. The requests were not responded to and are therefore admitted pursuant to Fed. R. Civ. P. 36(a). ("The matter is admitted unless within thirty days after service of the request, ...the party to whom the request is directed serves upon the party requesting the

admission a written answer or objection addressed to the matter....”).

Subsection (b) of the Rule states: “any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission.” Fed. R. Civ. P. 36.

Therefore, the matter set forth in the Requests for Admission is deemed admitted by Mississippi Mortgage. The Requests for Admission when admitted establish a *prima facie* case against Mississippi Mortgage.

STANDARD OF REVIEW FOR SUMMARY JUDGMENT

The Plaintiffs’ motion should be granted if there is no genuine issue of material fact. Summary judgment shall be granted if the pleadings, depositions, answers to admissions on file... show there is no genuine issue of material fact. F.R.C.P. 56(c). “The mere existence of a factual dispute does not by itself preclude the granting of summary judgment.” *Broadcast Music, Inc., v. Pine Belt Inv. Developers, Inc.*, 657 F. Supp. 1016, 1017 (S.D. Miss. 1987), (quoting *Anderson v. Liberty Lobby*, 477 U.S. 242 (1986). “As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986).

This Court has the authority under Fed. R. Civ. P. 56(c) to take those “admissions on file” and grant summary judgment in favor of the Plaintiffs if its shown that there is no issue of material fact left. Here, by Defendant Mississippi Mortgage’s own admissions, there is not.

STANDARD FOR ADMITTING PROPOUNDED REQUESTS FOR ADMISSION

A party is allowed to make a Request for Admission of any matters within the scope of Fed. R. Civ. P. 26(b)(1), and “the matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may allow, or as the parties may agree to in writing, subject to Rule 29.” Pursuant to Fed. R. Civ. P. 36(a) the matters admitted are conclusively established. Default admissions may support a summary judgment and, therefore, Plaintiffs are entitled to summary judgment as to liability against Mississippi Mortgage on their claims, including the RICO claims.

The issue of damages is reserved for later determination.

SO ORDERED AND ADJUDGED on this, the 30th day of August, 2007.

s/Keith Starrett
UNITED STATES DISTRICT JUDGE